

REMARKS

1. In the above-captioned Office Action, the Examiner rejected claims 1 and 8 under 35 U.S.C. §103(a) given Newman ("Determining the Fair Price") in view of Horie (U.S. Patent No. 5,546,564). Claims 13-20 are rejected under 35 U.S.C. §103(a) given Burns et al. (U.S. Patent No. 5,189,606) and Newman. Claims 2-7 and 9-12 were rejected under 35 U.S.C. §103(a) given Newman, Burns, and Horie in view of Dudle (U.S. Patent No. 5,570,291). These rejections are traversed and reconsideration is hereby respectfully requested.

2. Claims 1 and 8 were rejected under 35 U.S.C. §103(a) given Newman in view of Horie. Claims 13-20 are rejected under 35 U.S.C. §103(a) given Burns and Newman. Claims 2-7 and 9-12 were rejected under 35 U.S.C. §103(a) given Newman, Burns, and Horie in view of Dudle. Prior to discussing the merits of the Examiner's position, the applicant believes it would be helpful to first briefly describe and characterize the Newman reference.

THE NEWMAN REFERENCE

As stated in Newman:

Supplier price analysis looks at the industry the supplier operates in, the supplier's position in the industry, and the pricing structure of the supplier [Page 27, Column 2, Paragraph 2].

If the supplier is a follower in the industry, then, given industry practices, the supplier should not exhibit any marked deviation from industry *norms* [Page 27, Column 3, Paragraph 2].

Now that we have the background on the industry and Shawnee's position in the industry, the next step is to analyze the firm's pricing structure [Page 28, Column 1, Last Paragraph].

Our next step is to estimate the material cost in the product [Page 28, Column 3, Paragraph 3].

... it is important to calculate the incremental cost of goods sold [Page 29, Column 1, Top Partial Paragraph (begins on previous page)].

Performing this calculation for the period 1978 to 1987 and averaging over the period gives a value of 29.4 % (Table 4) [Page 29, Column 1, Paragraph 1].

Because the Shawnee data in Table 2 show an average cost of goods sold of 60%, we can assume that two-thirds of cost of goods sold is going to material and labor costs and one-third is allocated to overhead. This conclusion is based on the assumption that once the breakeven point has been reached, the only costs incurred with increased sales are variable costs. [Page 29, Column 1, Paragraph 1]

Because of the low labor content in the product the material cost estimate and the percentage of material cost to cost of goods sold should be relatively closed to the two-thirds figure. ... The buyer then postulates a set of material to labor ratios and completes the computation of the labor as a fraction of the material cost. ... An additional computation shows overhead as a percentage of direct labor. [Page 29, Column 1, Paragraph 2].

From the data in Table 1 and Table 2, the buyer is able to construct the pricing relationship used by the supplier in the initial estimate [Page 29, Column 3, Top Partial Paragraph (begins in previous column)].

Supplier price analysis involves estimation and assumptions; therefore the validity of the estimation process depends on the lack of variability in the data. This can be determined by looking at the range of the data or using a (sic) statistical measures of dispersion such as the standard deviation [Page 30, Column 1, Paragraph 1].

The *U.S. Industrial Outlook* cites an average price decline of 13.1% over the last 16 years. Unless there is some even that is going to correct this situation overnight, the buyer can expect to be paying 13% less next year for the same item. As a result, the buyer must secure a significant concession if the order spans the next year or be paying too much for the item. [Page 30, Column 3, Paragraph 5]

Supplier analysis allows the buyer to look for areas of possible price concession. For example, if the supplier has been devoting large amounts to research and development and the item being purchased is an *off-the-shelf* product, it is worthwhile for the buyer to negotiate a price concession based on the technological content of the product [Page 31, Column 2, Paragraph 1].

Newman therefore describes a method of estimating a specific supplier's prices by analyzing the supplier and its position in the industry. Newman teaches the use of analysis of a specific supplier, its position in the industry, industry norms, averages, and estimating prices based on other indices, such as labor related to material cost, overhead based on labor, dispersions about ratios, and so forth. Newman takes the supplier's price, not cost, and negotiates *downward* based on concessions he assumes the buyer can negotiate based on industry financials and/or other factors related to the supplier. Newman does *not* describe a lowest cost potential for any aspect or cost component. Newman does not mention trying to obtain a lowest cost potential, nor any similar concept. Newman does not utilize lowest cost potential of cost components, but rather makes generalities with respect to labor, material, and overhead. Newman does not negotiate with the supplier from the lowest cost potential, but rather starts with the supplier's price, which includes profits and other costs that are not part of the lowest cost potential. Newman's buyer then negotiates *downward*, which no supplier would reasonably do from the lowest cost potential because the supplier would only incur losses downward from such a point.

Therefore, Newman does *not* teach or suggest any method that *determines the lowest potential cost* for a part, as set forth in various ways in the claims. Newman also fails to teach identifying the cost components as set forth in the claims above. Burns and Horie, which teach estimating and averaging to get an actual cost, and Dudle also fail to teach or suggest any method that determines the *lowest potential cost* for a part, as set forth in various ways in the claims.

Neither Newman, Burns, Horie, nor Dudle teaches or suggests determining or totaling lowest cost potential values nor an ought-to-be cost. Thus, the claims of the present invention are not taught or suggested by Newman, Burns, Horie and/or Dudle. Combining these references fails to teach or yield the invention as claimed. The combination of these references fails to teach or suggest all the elements of the claims. Further, one of skill in the art would not be motivated to make such a combination. Therefore, the present invention is not obvious in light of any combination of Newman, Burns, Horie and/or Dudle.

Thus, Newman, Burns, Horie, and Dudle fail to teach the subject matter of the independent claims 1, 2, 5, 8, 9, 13, 15, and 18. Hence, the applicant respectfully submits that claims 1, 2, 5, 8, 9, 13, 15, and 18 may be passed to allowance.

With respect to claim 17, neither Newman, Burns, Horie, nor Dudle teaches taking into account multiple designs for a component.

Furthermore, claims 3, 4, 6, 7, 10-12, 14, 16, 17, 19, and 20 are dependent upon an independent claim that is shown to be allowable. For all these reasons, the dependent claims are themselves allowable.

3. A typographical error is corrected by the above amendment to claim 4.

4. The Examiner is invited to contact the undersigned by telephone or facsimile if the Examiner believes that such a communication may advance the prosecution of the present application. Notice of allowance of claims 1-20 is hereby respectfully requested.

Respectfully submitted,

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